**[Form of Cover Letter for REIT Demand Letter Documents – Private Fund with subsidiary REIT]**

January \_\_, 2022

**[NAME]**

**[NAME OF COMPANY]**

**[ADDRESS]**

Dear **[Name]**:

This letter is in reference to your real estate fund (the “Fund”), which owns all of the outstanding common shares of a subsidiary REIT (the “REIT Subsidiary”).[[1]](#footnote-1) If you manage more than one real estate fund that has a subsidiary REIT, then these instructions apply separately for each such REIT.

IRS Treasury regulations require each REIT to take certain action to ascertain their stock ownership ***not later than January 30, 2022.***

In order to comply with these regulations, you should do the following:

* The REIT Subsidiary is required to deliver a Demand Letter to the Fund (in the form enclosed) by no later than January 30, 2022.
* The Fund should complete the Ownership Statement attached to the Demand Letter and deliver the Ownership Statement to the REIT Subsidiary. The REIT Subsidiary is required to maintain the completed Ownership Statement in its records.
* Confirm that each holder of preferred shares of the REIT Subsidiary owned less than 0.5% of the total outstanding shares of the REIT Subsidiary (including both common and preferred shares), as measured based on either vote or value, at all times during 2021. If this is the case, then the REIT Subsidiary is not required to deliver Demand Letters to the preferred shareholders. If this is not the case, then please contact us for additional information.[[2]](#footnote-2)

We also suggest that a Secretary’s certificate be retained in the files to the effect that “I hereby certify, under penalties of perjury, that on this day I caused to be sent the attached demand letter to each holder on the attached list, who were the only shareholders of record of 0.5% or more(by vote or value) of **[Name of REIT Subsidiary]**’s shares at any time in 2021.”

Very truly yours,

**[NAME]**

Enclosures

**Form of Demand Letter Required by Treasury Regulations Section 1.857-8**

**[DATE – *send before January 30, 2022*]**

**[Note that a copy of IRS regulations (enclosed) should be provided with this demand letter per the last sentence below]**

Dear Shareholder:

Section 1.857-8(d) of the Treasury Regulations (the “Regulations”) requires **[Name of REIT Subsidiary]** (the “Company”) to demand that holders of record of 0.5% or more of its **[shares of capital stock]** **[revise as appropriate]** (referred to in this letter as “stock”) provide the Company with written statements regarding the actual and constructive ownership of such stock. The “actual owner” of stock is the person required to include in gross income in his/her/its federal tax return the dividends received on the stock. “Constructive” ownership is determined by applying the provisions of Section 544 of the Internal Revenue Code of 1986, as amended (the “Code”), as modified by Section 856(h) of the Code. Company records indicate that on some date or dates during 2021 you may have been the holder of record of 0.5%or more of the Company’s outstanding stock.

Accordingly, the Company requests that you complete the enclosed ownership statement.

Please return the completed ownership statement to us immediately. If you have any questions or concerns, please contact me at \_\_\_\_\_\_\_\_\_\_\_\_.

The Company is required by the Regulations to inform you that if you were the holder of record of 0.5%or more of the Company’s stock in 2021, and you fail or refuse to comply with this request, you must submit with your federal tax return the information required by Section 1.857-9 of the Regulations, compliance with which may be more burdensome than furnishing to us the information requested on the enclosed form. A copy of Sections 1.857-8, -9, and -10 of the Regulations is enclosed for your reference.

Sincerely,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[Name of Company]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[Secretary]**

**OWNERSHIP STATEMENT**

The following is a statement of the “actual” and “constructive” ownership of shares of [**NAME OF SUBSIDIARY REIT]** (the “Company”), of which the undersigned was the holder of record at any time during the 2021 calendar year. The “actual owner” of stock is the person required to include in gross income in his/her/its federal tax return the dividends received on the stock. “Constructive” ownership is determined by applying the provisions of Section 544 of the Internal Revenue Code of 1986, as amended (the “Code”), as modified by Section 856(h) of the Code.

|  |  |  |
| --- | --- | --- |
| *Name & Address of Actual Owner* | | |
| [insert Fund name and address] | | |
| *Shares Actually Owned by the Actual Owner Named Above*  *at Any and All Times During 2021* | | |
| Number of Shares and Class of Shares Actually Owned | Date(s) Acquired | Date(s) Transferred |
| [100% of common shares] [confirm] |  |  |
| *Maximum Number of Shares Constructively Owned by* *Actual Owner Named Above*  *at Any Time During the Second Half of 2021* | | |
| Number of Shares and Class of Shares Constructively Owned | Date(s) Constructively Acquired | Date(s) Constructively Transferred |
| [N/A] |  |  |

HOLDER OF RECORD:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Federal Regulations**

**Reg §1.857-8. Records to be kept by a real estate investment trust.**

**(a)** **In general.** Under section 857(a)(2) a real estate investment trust is required to keep such records as will disclose the actual ownership of its outstanding stock. Thus, every real estate investment trust shall maintain in the internal revenue district in which it is required to file its income tax return permanent records showing the information relative to the actual owners of its stock contained in the written statements required by this section to be demanded from its shareholders. Such records shall be kept at all times available for inspection by any internal revenue officer or employee, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

**(b)** **Actual owner of stock.** The actual owner of stock of a real estate investment trust is the person who is required to include in gross income in his return the dividends received on the stock. Generally, such person is the shareholder of record of the real estate investment trust. However, where the shareholder of record is not the actual owner of the stock, the stockholding record of the real estate investment trust may not disclose the actual ownership of such stock. Accordingly, the real estate investment trust shall demand written statements from shareholders of record disclosing the actual owners of stock as required in paragraph (d) of this section.

**(c)** **Stock ownership for personal holding company determination.** For the purpose of determining under section 856(a)(6) whether a trust, claiming to be a real estate investment trust, is a personal holding company, the permanent records of the trust shall show the maximum number of shares of the trust (including the number and face value of securities convertible into stock of the trust) to be considered as actually or constructively owned by each of the actual owners of any of its stock at any time during the last half of the trust's taxable year, as provided in section 544.

**(d)** **Statements to be demanded from shareholders.** The information required by paragraphs (b) and (c) of this section shall be set forth in written statements which shall be demanded from shareholders of record as follows:

*(1)* In the case of a trust having 2,000 or more shareholders of record of its stock on any dividend record date, from each record holder of 5 percent or more of its stock; or

*(2)* In the case of a trust having less than 2,000 and more than 200 shareholders of record of its stock on any dividend record date, from each record holder of 1 percent or more of its stock; or

*(3)* In the case of a trust having 200 or less shareholders of record of its stock on any dividend record date, from each record holder of one-half of 1 percent or more of its stock.

**(e)** **Demands for statements.** The written statements from shareholders of record shall be demanded by the real estate investment trust in accordance with paragraph (d) of this section within 30 days after the close of the real estate investment trust's taxable year (or before June 1, 1962, whichever is later). When making demand for such written statements, the trust shall inform each such shareholder of his duty to submit at the time he files his income tax return (or before July 1, 1962, whichever is later) the statements which are required by §1.857-9 if he fails or refuses to comply with such demand. A list of the persons failing or refusing to comply in whole or in part with the trust's demand for statements under this section shall be maintained as a part of the trust's records required by this section. A trust which fails to keep such records to show, to the extent required by this section, the actual ownership of its outstanding stock shall be taxable as an ordinary corporation and not as a real estate investment trust.

**Reg §1.857-9. Information required in returns of shareholders.**

**(a)** **In general.** Any person who fails or refuses to submit to a real estate investment trust the written statements required under § 1.857-8 to be demanded by such trust from its shareholders of record shall submit at the time he files his income tax return for his taxable year which ends with, or includes, the last day of the trust's taxable year (or before July 1, 1962, whichever is later) a statement setting forth the information required by this section.

**(b)** **Information required.**

*(1)* *Shareholder of record not actual owner.* In the case of any person holding shares of stock in any trust claiming to be a real estate investment trust who is not the actual owner of such stock, the name and address of each actual owner, the number of shares owned by each actual owner at any time during such person's taxable year, and the amount of dividends belonging to each actual owner.

*(2)* *Actual owner of shares.* In the case of an actual owner of shares of stock in any trust claiming to be a real estate investment trust-

(i) The name and address of each such trust, the number of shares actually owned by him at any and all times during his taxable year, and the amount of dividends from each such trust received during his taxable year;

(ii) If shares of any such trust were acquired or disposed of during such person's taxable year, the name and address of the trust, the number of shares acquired or disposed of, the dates of acquisition or disposition, and the names and addresses of the persons from whom such shares were acquired or to whom they were transferred;

(iii) If any shares of stock (including securities convertible into stock) of any such trust are also owned by any member of such person's family (as defined in section 544(a)(2)), or by any of his partners, the name and address of the trust, the names and addresses of such members of his family and his partners, and the number of shares owned by each such member of his family or partner at any and all times during such person's taxable year; and

(iv) The names and addresses of any corporation, partnership, association, or trust, in which such person had a beneficial interest of 10 percent or more at any time during his taxable year.

**Reg §1.857-10. Information returns.**

Nothing in §§1.857-8 and 1.857-9 shall be construed to relieve a real estate investment trust or its shareholders from the duty of filing information returns required by regulations prescribed under the provisions of subchapter A, chapter 61 of the Code.

ACTIVE/96753415.8

11/23/21

1. These forms solely apply to REITs where all of the common shares are held by a fund and the only other shareholders are non-voting preferred shareholders admitted to meet the REIT 100 shareholder requirement. [↑](#footnote-ref-1)
2. These forms assume that the total number of shareholders of the REIT Subsidiary is 200 or less. If this is not the case, please contact us for more information. [↑](#footnote-ref-2)